

Todd Ashker, C58191  
Danny Troxell, B76578  
Box 7500 (D1-SHU)  
Crescent City, CA 95532-7500

Plaintiffs, *in pro se*

**FILED**

SEP 26 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND - DIVISION

Todd Lewis Ashker,  
Danny Troxell,  
Plaintiffs,

*vs.*

Arnold Schwarzenegger, et al.,  
Defendants.

} Case No. C05-3286 CW  
}  
} DECLARATION OF David  
}  
} Chance, #B40557,  
}  
} IN SUPPORT OF  
}  
} PLAINTIFFS.

I, David Chance, prison No. B40557, declare  
as follows:

1) I am a state prisoner serving a term of  
life, subsequent to my 1972 conviction for first  
degree murder and robbery. I am not a party to  
this case, but I am submitting this declaration  
in support of plaintiffs' cause of action in the  
above entitled matter. Based upon information,  
belief and personal knowledge of the matters

1 set forth herein, I am willing, able and competent  
2 to testify to such matters if called upon to do so.

3 2) I was received into the custody of the  
4 California Department of Corrections & Rehabilitation  
5 (CDCR) in March 1972, and my Minimum Eligible  
6 Parole Date was 12-01-78. Since my initial parole  
7 eligibility hearing, held sometime in 1977, I have  
8 had twelve subsequent parole hearings, wherein  
9 the Board of Parole Hearings (BPH) panels have all  
10 found me unsuitable for parole. In each and  
11 every case, the denial was based on a  
12 boilerplate formula as follows: 1) The nature of  
13 the commitment offense [nothing in the  
14 commitment offense, murder/robbery, was  
15 more aggravated or violent than the minimum  
16 necessary to commit the crime for which I  
17 was convicted]; 2) Failure to obtain "Necessary"  
18 programming; and 3) Failure to reduce custody  
19 level so as to get out of the SHU and have  
20 access to vocational/academic upgrading, as  
21 well as self-help programs.

22 3) As of March 13, 2008, my classification  
23 score was at 270 points; my last Rules  
24 Violation Report prior to the June 5, 2007 BPH  
25 hearings was on October 17, 2002. (The first rules  
26 violation in 12 years).

27 4) I have been confined to the Security  
28 Housing Unit (SHU) for approximately 34 of the

1 more than 36 years that I have been incarcerated.  
2 I have been in SHU on Indeterminate status  
3 since 1985, based solely on alleged gang  
4 Association/Membership. (Note: On December 7, 2002,  
5 I, along with 39 co-defendants, was taken into  
6 custody by the U.S. Marshals Service and arraigned  
7 in the U.S. District Court, Los Angeles, on  
8 charges related to prison gang activities under  
9 R.I.C.O., in U.S. vs. Mills, et al., No. CR 02938 GHK,  
10 and on November 3, 2006, ALL charges against  
11 me were dismissed WITH PREJUDICE.) Never-  
12 theless, upon my return to PBSP on 1-31-07, I  
13 was immediately placed back in the SHU  
14 based on the identical factors used against  
15 me in the federal RICO case that were dis-  
16 missed with prejudice.

17 5) I have been confined in the SHU at  
18 PBSP since January 1990 without access to  
19 vocational/academic programs or self-help  
20 opportunities, though, recently some limited  
21 educational courses, mostly GED/high school  
22 courses, via cell-study, have been made  
23 available on the institutional TV channels.  
24 There remains no vocational nor any meaningful  
25 self-help programs.

26 6) The BPH has demonstrated a total lack  
27 of due process at past parole hearings by their  
28 soliciting or attempting to solicit from me and

1 other lifers an agreement to waive parole consider-  
2 ation hearings in exchange for 2 or 3 year  
3 denials, or else risk a 5 year denial of  
4 parole.

5 7) The BPH maintains a no-parole policy  
6 for SHU life prisoners who have failed to "de-  
7 brief", and have on more than one occasion  
8 stated this fact to me on record. The BPH  
9 defends this practice by holding that a  
10 failure to "debrief" prevents a prisoner's  
11 release from SHU to the general population,  
12 and thus, access to programs deemed by  
13 the BPH as "necessary" before the setting  
14 of a release date. (Note: declarant's life  
15 sentence did not include any requirement  
16 that would make such programming a pre-  
17 requisite for parole release.

18 8) I have formally requested to "debrief" on  
19 numerous occasions beginning in 1986, and as  
20 recently as February 20, 2007, but was refused  
21 each time due to a failure/inability to admit  
22 gang involvement/membership, and to implicate  
23 others.

24 9) During the fifty months that I was out-  
25 to-court in Mills, et al., #CR 02938 GHK, it came  
26 to light during my review of the over 500,000  
27 pages of discovery documents, consisting of  
28 debriefing reports, confidential files, CDCR

1 internal memos, policies, and housing records, that  
2 no prisoner serving an indeterminate SHU term  
3 with a life sentence has ever received a parole  
4 release date

5 10) At my twelfth parole consideration  
6 hearing on June 5, 2007, I was again denied  
7 a parole release date, and the denial was set  
8 at three years, in violation of court order not  
9 to hand down lengthier denials than previous  
10 panels had given without stating reasons for  
11 doing so. (The court order comes from In re  
12 Rutherford/In re Inez Tito Lugo, Marin County  
13 Superior Court, No. SC135399A, CA1 No. A114111,  
14 in which the court was concerned the BPH  
15 would hand down lengthier denials in order to  
16 comply with another court order that the BPH  
17 eliminate their enormous backlog of overdue  
18 parole suitability hearings). Declarant had  
19 only been denied for two years at his tenth  
20 and eleventh subsequent parole hearings.  
21 In addition to the two-year denial handed  
22 down at my February 26, 2002 (eleventh)  
23 hearing, I was unable to attend my twelfth  
24 subsequent parole hearing until June 5,  
25 2007, over five years later, due to being  
26 out-to-court, and yet the most recent  
27 BPH panel handed down a three-year  
28 denial without stating reasons for the



lengthier denial.

11) The only alternative to the debriefing requirement is to be "inactive" for a period of six years, a CDCR policy initiated in 1999, whereby the Institutional Gang Investigation unit (IGI) conducts an "inactive" review of each alleged gang member/associate every six years to determine whether the prisoner has involved himself in gang activity. However, the vagueness and arbitrariness of this "review" process makes it impossible to be deemed "inactive". Examples: The IGI ruled that I was "active" in their 2001 review based solely on findings that an un-named prisoner in Tehachapi, (CCI) California Correctional Institution, allegedly sent or received a letter from another un-named person on the outside (free world), in which, it was alleged, my name had been mentioned in some unknown capacity, and that one, or both, of the un-named parties were allegedly members/associates of the Aryan Brotherhood. Their alleged use of my name in some unknown capacity was deemed proof by the IGI that I was "active" in a prison gang for another six years. Then on September 26, 2007, the IGI conducted yet another

1 inactive review and concluded once again that  
2 I was "active" based on four points: 1) A  
3 confidential memo, dated 4-2-05, in which the  
4 source identifies me as a gang member; 2)  
5 A confidential memo, dated 12-31-06, in which  
6 the source provided information that I had  
7 "recently sponsored another person for  
8 membership into the gang." (Note: as previously  
9 indicated, I was not at PBSP or the custody  
10 of the CDCR at this time, but rather in  
11 the custody of the U.S. Marshals Service from  
12 12-7-02 to 1-31-07); 3) A list of first names and  
13 birthdates (no last names or identification numbers).  
14 (Note: the list of names followed me back to PBSP  
15 from the San Bernardino County Detention Center  
16 where I, along with all the names on the list,  
17 were co-defendants in U.S. v. Mills, et al., supra,  
18 and where we spent three years together and  
19 we, being civil human beings, celebrated each  
20 other's birthdays - another point lost on the  
21 IGI); and 4) Two St. Patrick's Day cards that  
22 had shamrocks on them. (IGI holds that  
23 the shamrock is one of many logos/signs  
24 used by the Aryan Brotherhood - regardless  
25 of what it's on or how it's used). Therefore,  
26 my alleged gang membership will remain as  
27 "active" member for another six years until  
28 2013, at which time I'll receive another

1 so-called "inactive review." (Note: The IGI decision  
2 of September 26, 2007, is currently under  
3 administrative appeal, # PBSP-D-08-00425,  
4 and was filed with the Director of Corrections  
5 for Third Level Response on March 27, 2008).

6 12) To the best of my recollection I have never  
7 been charged with, nor found guilty of any gang-  
8 related activity. Certainly since my incarceration in  
9 PBSP from January, 1990 to present, I have not been  
10 charged with any illegal, gang-related activity.

11 13) Throughout my entire 36 years of incarcer-  
12 ation within the CDCR, I have never witnessed, nor  
13 have I known of a single prisoner to utilize nude  
14 photographs, magazine pictures or artwork to harass  
15 or harry correctional personnel. In fact, it has  
16 been my experience that those inmates who are  
17 or have been disruptive and abusive do not use,  
18 seek to obtain or require nude pictures in order  
19 to become problematic. Furthermore, the CDCR  
20 has in the past, and without incident, always  
21 been quite competent in setting forth guidelines  
22 and restrictions on where and how prisoners may  
23 or may not openly display nude pictures within  
24 their living quarters. In addition, I have never  
25 known nor heard of a single prison guard com-  
26 plain of being harassed or harried by the use  
27 of nude pictures. I have, however, heard a  
28 very small number of correctional guards



1 openly voice their moral aversion to "pornography"  
2 as it relates to their religious views. Yet I have  
3 never heard a single correctional guard, male  
4 or female, religious or not, complain or demon-  
5 strate any aversion to the daily strip searches  
6 they perform on nude prisoners.

7 14) From January 1990 to December 2002, I had  
8 subscriptions to numerous magazines which  
9 included: Tattoo; Flash; Tattoo Savage; Skin and  
10 Ink; Skin Art; Easyriders; Biker; Outlaw  
11 Biker; In The Wind; and Women of Outlaw  
12 Biker, all of which were approved and received  
13 in PBSP. However, upon my arrival at PBSP in  
14 January 1990, I was denied a large portion  
15 of my personal property, including all of my  
16 artwork. I filed suit in the Northern District  
17 Court, whereupon the court ordered both  
18 the warden of PBSP and the Director of  
19 Corrections to file a written report con-  
20 cerning the sending and receiving of art  
21 through the U.S. mail, and the possession  
22 of art by prisoners. At that time, PBSP  
23 disallowed all drawings, sketches, designs  
24 or graphics to be sent to or from prisoners.  
25 However, when complying with court order to  
26 file a written report with the court concerning  
27 their policy, PBSP officials radically modified  
28 their position and allowed me to have all

1 of my drawings, designs, sketches and graphics.  
2 I failed to prosecute further, having achieved  
3 my main goal, and the court denied or  
4 dismissed my complaint. The complaint did  
5 not include a "tattoo" business, or "tattoo design"  
6 business. I continue to receive, send and create  
7 sketches, drawings, designs and graphics to  
8 this day unless PBSP-IGI officials determine  
9 it to be gang related in some manner, ie:  
10 Shamrock in a St. Patrick's Day drawing.

11 I hereby declare under penalty of  
12 perjury that the foregoing is true and correct  
13 to the best of my knowledge, and was executed  
14 on this 29th day of June, 2008, at Pelican  
15 Bay State Prison, SHU D3-211, Crescent City,  
16 California.

17 [s] David Chance

18 David Chance, #B40557

19 DECLARANT  
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